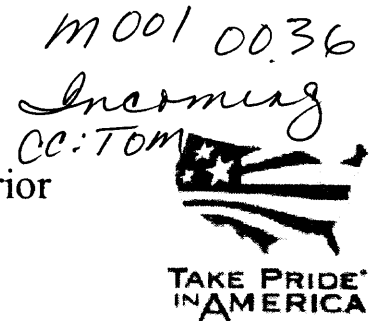




United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Cedar City Field Office
176 East DL Sargent Drive
Cedar City, UT 84720
Telephone (435) 586-2401
www.ut.blm.gov/cedar_city/



In Reply Refer To:
UT-042
3602: UTU-73390-A2

March 26, 2008

Mr. Niles Veal
Permit Manager
Twin Mountain Rock Company
P.O. Box 1009
Sheridan, WY 82801

RECEIVED
MAR 28 2008

DIV. OF OIL & GAS

Dear Mr. Veal:

This letter is response to your written request, dated March 18, 2008 and received in this office on March 24, 2008, to renew Twin Mountain Rock Company's current sales contract to extract Federally-owned mineral material at the Milford Ballast Rock Quarry. The Milford Quarry occupies BLM-managed land on portions of secs. 10, 11, 12, and 14, T. 27 S., R. 11 W., Beaver County, Utah.

In your letter, you note that the current contract sales amount, 400,000 tons, under the current contract, set to expire on May 31, 2008, will likely be reached or exceeded sometime before the end of March, 2008. You also note that while negotiations for a long-term sales contract are underway with your principal buyer, Union Pacific Railroad, this long-term contract remains uncertain and you are unable to commit at this time to a multi-year contract renewal with the BLM. Accordingly, you request another short-term contract, for six-months, for an additional 250,000 tons of railroad ballast and an unspecified amount of by-product / reject material. You state that you are agreeable to continuing with the current royalty terms for both ballast rock and reject / by-product material.

I am, of course, disappointed that Twin Mountain has yet to conclude its negotiations with Union Pacific to allow for a long-term contract to continue operations at the site. At the time of authorizing the current one year "bridge" contract I was under the impression that it would provide a generous amount of time for Twin Mtn. and the Union Pacific to complete negotiations. While I am willing to enter into yet another short-term "bridge" contract for the requested quantity of materials, I must warn you that any future contract

requests will be expected to involve terms of at least 5 years and at least 2,500,000 tons of ballast rock. Any further short term contract renewal requests are unlikely to be a workload priority for this office and continuity of production operations at the site is likely to be disrupted.

As you will recall from your previous contract request, BLM is required to collect "case-by-case fees" associated with processing of competitive mineral material sales under regulations 43 CFR 3602.43 and 43 CFR 3000.11. Under these regulations, we are required to provide you with a written fee estimate of the additional costs associated with obtaining a new contract prior to processing the contract. In the present case, in the interest of expediency, Mr. Ginouves of my staff has contacted you by telephone and obtained your verbal approval on an estimated cost recovery fee in the amount of **\$536.00** for processing the proposed mineral material contract. Attached is a copy of the Fee Estimate for Case-by-Case Processing. Please sign the enclosed estimate and return it to this office, before or concurrently with the enclosed sales contract and the required initial sales contract payment discussed below.

The contract terms and conditions should reflect those you requested in your letter and discussed through a telephone conversation with Ed Ginouves of my staff on March 25, 2008. Please review the contract terms thoroughly and contact this office immediately if there are any errors or questions in regard to those terms and conditions. The contract period begins on April 1, 2008, or as soon as the 400,000 tons of ballast rock has been removed under the current contract, *whichever comes first*, and terminates 6 months from that date. The following highlights the critical aspects of the contract.

The contract area, Sec. 1 of the contract, is the current large mine permit area as approved and bonded through the State of Utah, Division of Oil, Gas, and Mining (DOGM) under permit M/001/036.

Under Sec. 2 of the contract, covering amount and prices of the materials, all materials sold are grouped into two categories for purposes of royalty payment, just as in the current contract. One category covers all sales of Class 1 and Class 2 railroad ballast sold to the Union Pacific Railroad. The royalty rate to the BLM for these sales remains at \$0.43 per ton sold. With regard to the ballast sales to the railroad, totaling 250,000 tons, you are liable for the total purchase price, even if the quantity of ballast sold to the railroad is less than this amount. The other sales category applies to all other materials sold through the operation from the Federal lands within the large mine permit area. The other sales category includes all rip-rap, roadbase, minus ¾", other processed and unprocessed rock, and any ballast rock sold to entities other than the railroad. The royalty on these other materials is set at 7.5% of the sales price at the loadout/sales point. In the case of these other sales there is no minimum or maximum amount associated with the contract, only that all material sold in the contract period have royalty paid at the 7.5% rate. For your information, I have consulted with the appraiser on the royalty rates and he indicates that these same rates would be the baseline rates for any long-term subsequent contract, subject to adjustment beginning May, 2009 and every two years thereafter. The royalty adjustments will likely be indexed to any increases /decreases in the PPI for crushed stone products since the appraisal in 2007.

Section 3 of the contract requires an initial payment of 5% of the royalty value of the contracted railroad ballast, in this case **\$5,375.00**, prior to initiating removals under the contract. As soon as sales are initiated, royalty is to be paid monthly for all sales made during the month. Payment must be received by the BLM no later than 15 days after the monthly sales period.

To activate the contract you will need to sign the enclosed contract and cost recovery fee estimate, and return the originals to this office along with a check for \$5,375.00 for the contract initial payment and \$536.00 for the cost recovery fee, both made out to the BLM. Please reference the contract number, UTU-73390-A2, in any subsequent payments made or other correspondence concerning the Milford Quarry sales contract.

Should you have any questions, please contact Ed Ginouves of my staff at 435-865-3040.

Sincerely,

A handwritten signature in cursive script, reading "Randy M. Trujillo".

Randy M. Trujillo
Associate Field Office Manager

Enclosures: UTU-73390-A2 cost recovery estimate
UTU-73390-A2 contract document

cc: Tom Munson, DOGM
Mr. Craig Pfingsten, General Manager – Western Quarries Division Group, Twin Mountain Rock Company, P.O. Box 578, 70001 US Hwy 75, Fort Calhoun, NE 68023

**Fee Estimate for Case by Case Processing
Competitive Sale Renewal Cost Recovery**

Project Information

Serial Number: UTU-73390-A2
Date Filed: March 24, 2008

Applicant: Twin Mountain Rock Company
(subsidiary of Rinker Materials / CEMEX)
Address: P.O. Box 578, 7001 US Hwy 75, Fort Calhoun, NE 68023

Agent: Twin Mountain Rock Co.,
Address: 178 W 600 N, Milford, UT 84751

Type of Application: Competitive Sales Contract Renewal, 43 CFR 3602.47

Location: Milford Ballast Rock Quarry, Beaver County, UT
T. 27 S., R. 11 W., portions of secs. 10, 11, 12, 14

Estimated Processing Requirements for NEPA Compliance

Is NEPA Analysis Required? Yes___ No X___
Level of NEPA Review: EIS___ EA___
Will BLM conduct NEPA Analysis? Yes___ No___

Cost Recovery Estimate (43 CFR 3000.11)

| Processing Step | Estimated Cost |
|--|----------------|
| Application / Proposal Review, Initial & Final Processing Approval | \$536.00 |
| Mine / Reclamation Plan Review | \$0.00 |
| Appraisal Preparation, Approval, and Periodic Re-Appraisal | \$0.00 |
| NEPA Preparation | \$0.00 |
| | |
| Total Estimated Processing Cost | \$536.00 |

Approved by: Randy A. Aguillo
BLM Authorized Officer

Date: 3/25/08

Approved by: _____
Applicant

Date: _____

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

CONTRACT FOR THE SALE OF MINERAL MATERIALS

FORM APPROVED
OMB NO. 1004-0103
Expires: March 31, 2008

Office
Cedar City Field Office

Contract Number
UTU-73390-A2

The UNITED STATES OF AMERICA acting through the Bureau of Land Management (BLM), and Rinker Materials, Twin Mtn. Rock Company _____ you, the purchaser, make this AGREEMENT, under the authority of the Act of July 31, 1947 (61 Stat. 681), as amended at 30 U.S.C. 601 through 604, and the regulations at 43 CFR, Group 3600.

We agree:

Sec. 1. Contract area - Under the terms and conditions of this contract, the United States sells to you and you buy the mineral materials listed in Section 2 and contained in the following lands as shown on the map and mining plan attached to this contract:

| COUNTY | STATE | TOWNSHIP | RANGE | SECTION | ALIQUOT PARTS | MERIDIAN | ACREAGE |
|--------|-------|----------|----------|-------------|---|----------|------------|
| Beaver | UT | T. 27 S. | R. 11 W. | 10,11,12,14 | Those portions that lie within UDOGM large mine permit are M/001/036. | SLPM | ~300 acres |

Pit Name (if any):

Sec. 2. Amount and price of materials - The United States determines the total purchase price by multiplying the total quantity of each kind of mineral material designated by the unit price given below, or as changed through reappraisal.

| KIND OF MATERIALS | QUANTITY (Units Specified) | PRICE PER UNIT | TOTAL PRICE |
|---|-------------------------------|---------------------|------------------------|
| 1. Class 1 and Class 2 railroad ballast sold to the UPPR railroad | 250,000 tons | \$0.43/ton | \$107,500.00 |
| 2. All other mineral materials sourced from Federal lands within the permit area. | variable | 7.5% of sales price | variable |
| TOTAL | | | \$107,500.00 (minimum) |

BLM's determination of the amount of materials that you have taken under the contract is binding on you. You may appeal this determination as provided in Section 19.

You are liable for the total purchase price, even if the quantity of materials you ultimately extract is less than the amount shown above. You may not mine more than the quantity of materials shown in the contract.

Sec. 3. Payments, title, and reappraisals - You may not extract the materials until you have paid in advance for them in full \$ _____, or paid the first installment of \$ 5,375.00 _____

☐ If you pay in full in advance, BLM will check this box, and Subsections 3(a) through 3(c) do not apply to your contract. You must pay in full for all sales of \$2,000 or less.

(a) If you pay in installments, you must pay the first installment before BLM approves the contract.

(b) Once you start removing material, you must pay each subsequent installment payment monthly in an amount equal to the value of materials removed in the previous month. Payment must be made by the 15th day following the end of the month for which you are reporting. You must pay the total purchase price not later than 60 days before the contract expires.

(c) The United States will retain the first installment as security for your full and faithful performance and will apply it to the last installment required to make the total payment equal to the total price given in Section 2.

The total purchase price equals the sum of the total quantities removed, multiplied by their respective unit prices.

If you are late making an installment payment, you must not remove any more material until you have paid. Removing material you have not paid for is trespass, and for trespass you must pay at triple the appraised unit price, or at triple the reappraised unit price if BLM has made a reappraisal. To resume removal operations after you were late making payments, you must obtain BLM's written approval.

(d) You receive title to the mineral materials only after you have paid for them and extracted them.

Sec. 4. Risk of loss - You assume complete risk of loss for all materials to which you have title. If material covered by this contract is damaged or destroyed before title passes, you are liable for all loss suffered if you or your agents are directly or indirectly responsible for the damages. If you are not responsible for the damage or destruction, you are liable only to the extent that the loss was caused by your failure to remove the material under the terms of this contract. You are still liable for breach of contract or any wrongful or negligent act.

Sec. 5. Liability for damage to materials not sold to you - You are liable for loss or damage to materials not sold to you if you or your agents are directly or indirectly responsible for the damage or loss. You are also liable if you fail to perform under the contract according to BLM's instructions and the United States incurs costs resulting from your breach of any contract term or your failure to use proper conservation practices. If the damage resulted from willful or gross negligence, you are liable for triple the appraised value of the damaged or destroyed materials. If the damage or destruction did not result from willful or gross negligence, you are liable for lesser charges, but not less than the appraised value of the materials.

Sec. 6. Stipulations and reserved terms - Your rights are subject to the regulations at 43 CFR Group 3600 and to any stipulations and the mining plan attached to this contract.

☒ **BLM will check this box if there are stipulations attached to this contract.**

Sec. 7. Notice of operations - You must notify BLM immediately when you begin and end operations under this contract. If BLM has specified a time frame for notification, you must comply with that time frame.

Sec. 8. Bonds - (a) You must furnish BLM with a bond in the amount of \$ _____ as a condition of issuing this contract.

(b) If you do not perform all terms of the contract, BLM will deduct an amount equal to the damages from the face amount of the bond. If the damages exceed the amount of the bond, you are liable for the excess. BLM will cancel the bond or return the cash or U.S. bonds you supplied when you have completed performance under this contract.

(c) BLM will require a new bond when it finds any bond you furnish under this contract to be unsatisfactory.

Sec. 9. Assignments - You may not assign this contract without BLM's written approval.

Sec. 10. Modification of the Approved Mining or Reclamation Plan - You or BLM may initiate modification of these plans to adjust for changed conditions, or to correct any oversight. The conditions for BLM requiring you to modify these plans, or approving your request for modification are found in the regulations at 43 CFR 3601.44.

Sec. 11. Expiration of contract - This contract will expire 0 years, 6 months, 0 days from its approval date, unless BLM extends the term or renews the contract.

☒ **BLM will check this box if this contract is a renewable competitive contract.**

Sec. 12. Renewal of renewable competitive contract - BLM will renew your contract if you apply in writing no less than 90 days before your renewable competitive contract expires and you meet the conditions in the regulations at 43 CFR 3602.47.

Sec. 13. Violations and cancellations - (a) If you violate any terms or provisions of this contract, BLM may cancel your contract following the regulations at 43 CFR 3601.60 et seq., and recover all damages suffered by the United States, including applying any advance payments you made under this contract toward the payment of the damages.

(b) If you extract any mineral materials sold under this contract during the suspension period, or after the contract has expired or been canceled, you have committed, and may be charged with, willful trespass.

Sec. 14. Responsibility for damages suffered or costs incurred by the United States - If you, your contractors, subcontractors or employees breach this contract or commit any wrongful or negligent act, you are liable for any resulting damages suffered or costs incurred by the United States. You must pay the United States within 30 days after receiving a written demand from BLM.

Sec. 15. Extensions of time - BLM may grant you an extension of time in which to comply with contract provisions under the regulations at 43 CFR 3602.27. For contracts with terms over 90 days, you must apply in writing no less than 30 or more than 90 days before your contract expires. For contracts with terms of 90 days or less you must apply no later than 15 days before your contract expires.

Sec. 16. Time for removing personal property - You have 90 days (not to exceed 90) from the date this contract expires to remove your equipment, improvements, and other personal property from United States lands or rights-of-way. You may leave in place improvements such as roads, culverts, and bridges if BLM consents. Any property remaining after this period ends becomes the property of the United States, but you will remain liable for the cost of removing it and restoring the site.

Sec. 17. Equal opportunity clause - The actions you take in hiring must comply with the provisions of Executive Order No. 11246 of Sept. 24, 1965, as amended, which describe the non-discrimination clauses. You may get a copy of this order from BLM.

Sec. 18. *Effective date* - This contract becomes effective as indicated below.

☐ If this contract becomes effective on the date BLM signs the contract, BLM will check this box.

☒ If this contract becomes effective only after certain conditions are met, BLM will check this box, list the conditions below, and indicate the effective date.

Contract effective after signature of purchaser, receipt of initial payment (\$5,375.00) and receipt of cost recovery fee (\$536.00).

Sec. 19. *Appeal* - You may appeal any decision that BLM makes in regard to this contract under Parts 4 and 1840 of Title 43 of the Code of Federal Regulations.

The following parties have executed this contract as of:

PURCHASER

THE UNITED STATES OF AMERICA

(Individual or Firm Name)

By

(Address)

(BLM)

(Phone Number - include area code)

(Title)

(Signature)

(Date)

(Signature)

If you are a corporation, affix corporate seal here:

Title 18 U.S.C 1001, makes it a crime for any person knowingly or willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction, subject to a fine of up to \$10,000 and imprisonment up to 5 years.

NOTICES

The Privacy Act of 1974 and the regulation in 43 CFR 2.48(d) provide that you be furnished the following information in connection with information required by this application.

AUTHORITY: 30 U.S.C. 601 et seq.; 43 CFR 3600

PRINCIPAL PURPOSE: BLM uses this information to identify the parties entering into contracts for disposing of mineral materials.

ROUTINE USES: BLM will transfer information from the record or the record itself to appropriate Federal, State, local, or foreign agencies, when relevant to criminal, civil, or regulatory investigations or prosecutions.

EFFECT OF NOT PROVIDING INFORMATION: If you do not provide this information to BLM, we will not be able to process your application for a contract.

The Paperwork Reduction Act of 1995 requires us to inform you that:

The BLM is collecting this information to process your application and effect a binding contract.

The BLM will use this information to identify and communicate with applicants.

You must respond to this request to get a benefit.

The BLM would like you to know that you are not required to respond to, this or any other Federal agency-sponsored information collection which does not have a currently valid OMB control number.

BURDEN HOURS STATEMENT: Public reporting burden for this form is estimated to average about 30 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Department of the Interior, Bureau of Land Management (1004-0103), Bureau Information Collection Clearance Officer (WO-630), 1849 C Street, N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Special Stipulations for Material Sales Contract: UTU-73390-A2

1. This contract serves as a renewal of a previously issued contract (UTU-73390-A1) which was issued for the period of 5/21/2007 through 5/31/2008, and fulfilled prior to that 5/31/2008 by meeting the full contract amount. The contract period for 73390-A2 is 6 months from either April 1, 2008 or from the date ballast rock sales to the UPPR reached 400,000 tons under contract A1, whichever comes first.
2. All mineral material removed from the contract area is subject to royalty payment.

The royalty rate for all Class 1 & Class 2 ballast rock sold to the railroad is \$0.43/ton. The royalty rate for all other material sold (i.e. roadbase, rip-rap, ¾" minus, ballast to purchasers other than the railroad) is set at 7.5% of the sales value at the point of sales.

3. The permittee, and/or its designated operator, will maintain records of all material hauled or sold from the site. A production summary of all material produced and hauled from the site must be submitted by the end of the permit year covering the preceding year's production.
4. The operating area covered by this contract is limited to the area approved for mining operations under Division of Oil, Gas, and Mining large permit M/001/036.
5. Sec. 12 of the contract, addressing renewal of a competitive contract, is contingent on the subsequent contract renewal requesting no less than 2,500,000 tons of railroad ballast.